Walker Die Casting, Inc. *and* Local 259, Stove, Furnace, and Allied Appliance Workers' International Union of North America, AFL-CIO, and Employee Committee, Party in Interest. Cases 26-CA-8196, 26-CA-8213-1, -3, 26-CA-8227, 26-CA-8396, and 26-CA-8477

March 24, 1981

DECISION AND ORDER

On November 19, 1980, Administrative Law Judge J. Pargen Robertson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Walker Die Casting, Inc., Lewisburg, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Interfering with, restraining, and coercing the employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, by threatening not to reinstate employees because of the employees' union activities; threatening employees that they were to mind their knitting when they returned to work because of their union activities; threatening to get rid of the Union; offering wage increases in order to induce its employees to break the strike and return to work; telling employees that if it had to reinstate everybody in the Union, it was in no hurry to start back to negotiations; threatening to shut the door of the plant rather than continuing to deal with the union president; telling its employee that by returning to work after engaging in the strike she had lost her seniority status; informing employees that they would not be considered for employment until after the decertification election; removing its employees' picket signs; advising employees to resign from the Union; soliciting employees to refuse to honor a strike; engaging in surveillance of its employees' union activities; threatening its employees that there would be no more collective-bargaining agreements with the Union; and telling its employees that they would have a good place to work once the Union was defeated."

2. Substitute the following for paragraph 1(f):

"(f) Unilaterally, without bargaining with Local 259, Stove, Furnace, and Allied Appliance Workers' International Union of North America, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the above-described unit, changing its wages or other conditions of employment, unilaterally establishing an employee committee, withdrawing its last contract proposal, or communicating directly with employees instead of bargaining with the above-named Union."

3. Add the following sentence at the end of paragraph 2(a):

"If, after such discharges, sufficient jobs are not available for these employees, they shall be placed on a preferential hiring list in accordance with their seniority or other nondiscriminatory practice theretofore utilized by Respondent, and they shall be offered employment before any other persons are hired."

4. Substitute the attached notice "Appendix B" for that of the Administrative Law Judge.

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[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Administrative Law Judge found that Respondent, by posting its August 16, 1979, notice, violated Sec. 8(a)(1) and (5) of the Act by communicating directly with employees, soliciting employees to refuse to honor a strike if one is called, and advising employees to resign from the Union to avoid a fine. We agree with the Administrative Law Judge, but for reasons other than those cited in his Decision. *Lehigh Lumber Company, and Brown-Borhek Company*, 230 NLRB 1122, fn. 1 (1977), cited by the Administrative Law Judge in support of his conclusions, is distinguishable from the case at hand since the respondent in *Lehigh, supra*, in an effort to induce an employee to abandon the union, promised him increased wages and benefits which had not been offered the union. However, the record herein amply supports the finding of a violation of Sec. 8(a)(1) and (5) of the Act. First, although Respondent advised employees to resign from the Union to avoid a fine, the Union had made no threat to fine employees. In addition, Respondent, after posting the August 16, 1979, notice, unilaterally raised starting wages, unlawfully withdrew its last contract offer and ceased to bargain, made numerous coercive comments including threats to "bust the Union," and finally established an unlawful "Employee Committee" as an alternative to the Union. These actions establish a pattern of conduct clearly intended to dissipate employee support for the Union as the sole collective-bargaining agent. We find that the August 16 notice was not an innocent attempt by Respondent to advise employees of their rights or to give notice of the intention to operate during the strike, but was calculated to undermine the Union and set the stage for further attempts to bypass and ignore the Union, all in violation of Sec. 8(a)(1) and (5) of the Act. See *Bromine Division, Drug Research, Inc.*, 233 NLRB 253, 263 (1977), enfd. 621 F.2d 806 (6th Cir. 1980); *O'Land, Inc., d/b/a Ramada Inn South*, 206 NLRB 210, 219 (1973).

[3] The recommended Order and notice have been modified to remedy all unfair labor practices found by the Administrative Law Judge and to clarify the reinstatement rights of returning strikers. *Larand Leisurelies, Inc.*, 213 NLRB 197, 198 (1974), enfd. 523 F.2d 814 (6th Cir. 1975).

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT threaten our employees that we will not reinstate them because of their activities on behalf of Local 259, Stove, Furnace, and Allied Appliance Workers' International Union of North America, AFL-CIO, or any other labor organization, or because they engage in strike activity.

WE WILL NOT tell our employees that they are to mind their own knitting because of the employees' union activities.

WE WILL NOT threaten to get rid of the Union.

WE WILL NOT offer our employees higher wages in order to induce our employees to break a strike and return to work.

WE WILL NOT tell our employees that we are in no hurry to resume collective-bargaining negotiations if we have to reinstate everybody in the Union.

WE WILL NOT threaten our employees with plant shutdown because we have to deal with the union president.

WE WILL NOT tell employees that they have lost their seniority by engaging in a strike.

WE WILL NOT inform our employees that reemployment will have to await a decertification election.

WE WILL NOT remove our employees' picket signs from public property.

WE WILL NOT advise employees to resign from the Union nor solicit employees to refuse to honor a strike.

WE WILL NOT engage in surveillance of our employees' union activities.

WE WILL NOT threaten our employees that there will be no more collective-bargaining agreements with the Union.

WE WILL NOT inform our employees that they will have a good place to work once the Union is defeated.

WE WILL NOT discharge or refuse to reinstate our employees or otherwise discriminate against our employees because of their strike activities or union activities.

WE WILL NOT form, assist, support, dominate, or interfere with the Employee Committee.

WE WILL NOT vary or abandon any wage, hour, or other substantive benefit established for our employees as a result of our dealing with the Employee Committee.

WE WILL NOT recognize and will completely disestablish the Employee Committee, or any successor thereto, as the representative of our employees concerning wages, rates of pay, hours of employment, or any other terms and conditions of employment, including the settlement of grievances.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 259, Stove, Furnace, and Allied Appliance Workers' International Union of North America, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT unilaterally change our wage rates, or other conditions of employment, or establish an employee grievance committee without first negotiating with the above-mentioned Union as the exclusive representative of the employees in the bargaining unit described below; withdraw our last contract proposal; nor communicate directly with employees instead of bargaining with the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer immediate and full reinstatement to: Cathy Becquet, Dickie Adkins, Lacon Crossland, Sam Cook, Michael Cross, Robert Hayes, Michael Holder, Larry Jones, Jimmy Prince, Larry Peters, E. W. Woodward, David Wentzell, Alfred Jett, Dewey Wayne Rowe, Michael Wayne Brewer, Charles E. McCord, Ann Derryberry, Eddie Ward, Clyde Erwin, Sherry D. Willoughby, David Sherin, Chit Derryberry, James D. Flowers, Gary McClendon, Wesley Poteete, Sandra D. Luna, Jimmy Winchester, Raymond P. Osborne, Edel Sparks, Eugene Pullen, Roy Rowe, Paul Rowe, James E. Stewart, Becky Gillium, William Frank Stewart, Margaret Neill, Karon Pischel Wells, Nancy Reed, John Liggett, Stanley Galbraith, Marie Logue, Ruby Eckenroth, Larry S. Hopper, Shirley P. Metcalf, Nancy Diane Smith, Sam L. Cook, Jr., Ben Porterfield, William F. Davis, Thomas R. Smith, Roy Garrett, Ronnie L. Burns, Wilburn Phillips, James Stegall, Chestley H. Derryberry, Mark Welch, Wiliam Edwin Taylor, Bill D. Spence, Eddie Ward, Frankie Moore, Wendell J. Rowe, Jackie Metcalf, Mark Welch, and Denise Luker to their former jobs

or, if their jobs no longer exists, to substantially equivalent jobs, discharging, if necessary, any replacements hired on or after August 27, 1979. If, after such discharges, sufficient jobs are not available for these employees, they shall be placed on a preferential hiring list in accordance with their seniority or other nondiscriminatory practice theretofore utilized by us, and they shall be offered employment before any other persons are hired, and WE WILL make each of those employees whole, with interest, for any loss they may have suffered as a result of our discrimination against them.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described below with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees, including shipping, receiving, and tool crib employees, excluding all office clerical employees, technical and professional employees, and supervisors as defined in the Act.

WALKER DIE CASTING, INC.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge: This case was heard on June 16–19, 1980, at Lewisburg, Tennessee. The charge in Case 26-CA-8196 was filed on December 13, 1979, and amended on December 21, 1979. The Case 26-CA-8213-1 charge was filed on January 1, 1980. The charge in Case 26-CA-8213-3 was filed on January 3, 1980, and amended on January 16, 1980. Case 26-CA-8227 was filed on January 16, 1980, and amended on January 29, 1980. Case 26-CA-8396 was filed on April 23, 1980. Case 26-CA-8477 was filed on June 9, 1980, and amended on June 12, 1980. An order consolidating cases, consolidated complaint and notice of hearing issued on February 22, 1980. An order consolidating cases, amended consolidated complaint and notice of hearing issued on May 21, 1980, and was amended at the hearing on June 16, 1980, to allege:

(1) Respondent engaged in violations of Section 8(a)(5) by failing to recognize and bargain collectively with the Charging Party (the Union) by (a) proposing that employees be allowed to revoke union dues-checkoff authorizations at any time within 10 days' notice; (b) suggesting that union members resign their union membership before crossing the picket line to avoid the possibility of a fine by the Union; (c) withdrawing its last contract offer presented during negotiations; (d) unilaterally implementing wage increases in excess of those offered during negotiations; (e) unilaterally implementing an attendance bonus; (f) making the attendance bonus applicable on a weekly basis, then changing it to monthly, and back to weekly again; (g) unilaterally establishing an employee grievance committee; and (h) refusing to recognize and bargain with the Union since September 11, 1979.

(2) Respondent engaged in violations of Section 8(a)(3) by failing and refusing to reinstate numerous employees following their unconditional offers to return to work and by discharging numerous employees, including various probationary employees and employee Cathy Becquet.

(3) Respondent engaged in violations of Section 8(a)(2) by establishing, recognizing and bargaining with an employee committee.

(4) Respondent engaged in violations of Section 8(a)(1) on numerous occasions.

(5) Respondent caused and prolonged a strike by its employees, through the unfair labor practices alleged in the complaint.

Upon the entire record, my observation of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I hereby make the following:

FINDINGS[1]

Since 1971, Respondent and the Union have been parties to several collective-bargaining agreements. During that period Respondent continuously represented Respondent's production and maintenance employees.[2]

During early 1979, Respondent asked the Union to engage in early negotiations. The collective-bargaining agreement in existence at that time was set to expire on August 18, 1979.

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[1] Neither the status of the Charging Party nor the allegation regarding commerce is in dispute. The complaint alleges, Respondent admitted, and I find that Walker Die Casting, Inc., is a corporation with a place of business in Lewisburg, Tennessee, where it is engaged in the manufacture and nonretail distribution of custom zinc and die castings. Respondent admitted, and I find, that annually, during the course and conduct of its business operations, it has sold and shipped from its Lewisburg, Tennessee, facilities goods and materials valued in excess of $50,000 directly to points outside the State of Tennessee and it purchased and received at its Lewisburg facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Tennessee. Respondent admitted, and I find, that at all material times it was an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

The complaint alleged, Respondent admitted, and I find that the Charging Party (the Union) is now, and has been at all times material herein, a labor organization within the meaning of Sec. 2(5) of the Act. The complaint also alleged and on the basis of unrebutted record evidence I find that the Employee Committee constituted an employee representation committee in which employees participated and which existed for the purpose of dealing with Respondent concerning grievances and conditions of work. On the basis of that allegation and the record evidence, I find that the Employee Committee constituted a labor organization within the meaning of Sec. 2(5) of the Act.

[2] The unit, which Respondent admitted to be an appropriate unit, is described as: "All production and maintenance employees, including shipping, receiving, and tool crib employees, excluding all office clerical employees, technical and professional employees, and supervisors as defined in the Act."

However, negotiations did not begin until the parties met on June 29, 1979. Thereafter, negotiation sessions occurred on August 7, 13, 14, 16, and 17, 1979.

On August 18, 1979, Respondent's employees struck.

The General Counsel contends that Respondent did not engage in good-faith bargaining and that the strike was an unfair labor practice strike. In consideration of whether the strike was an unfair labor practice strike from its inception, the complaint alleges two matters which occurred on or before August 18 as contributing causes to the strike: (1) Respondent, during contract negotiations, proposed that employees be allowed to revoke union dues-checkoff authorizations at any time within 10 days' notice; and (2) Respondent suggested to employees that the union members resign their union membership before crossing the picket line to avoid possibility of a fine by the Union.

Following the beginning of the strike, Respondent allegedly engaged in numerous 8(a)(1) violations beginning in August 1979 and extending into the spring of 1980. Additionally, Respondent allegedly engaged in other 8(a)(5) violations; 8(a)(3) violations by refusing to reinstate some employees and discharging others; and 8(a)(2) violations by establishing, recognizing, and bargaining with an employee committee.

During the strike there was very little contact between Respondent and the Union. On September 7, 1979, the Union submitted a contract proposal to Respondent. However, on September 11, 1979, Respondent notified the Union that it did not "feel that any further meetings can be scheduled until the petition has been resolved."[3] No further negotiations occurred between the parties after August 17, 1979.

Conclusions

A primary question in this case is whether the August 18 strike was an unfair labor practice strike and, if so, whether it was an unfair labor practice strike from its inception, or whether it started as an economic strike but was, at some point, converted to an unfair labor practice strike. Therefore, I have categorized the complaint allegations on the basis of prestrike allegations and on allegations regarding incidents which occurred following commencement of the strike.

A. *Prestrike Allegations*

1. The negotiations

The General Counsel, in his brief, contends that Respondent, during negotiations with the Union, engaged in surface bargaining. In consideration of Respondent's conduct prior to the employees' August 18 strike, I find little support for the General Counsel's contention.

Respondent's president, Robert Walker, testified that during early 1979 he asked the Union to engage in early negotiations. No evidence was offered to contest Walker's testimony in that regard. The Union's vice president, E. Ray Sullivan, admitted that Walker contacted the committee in January or February 1979 and indicated that he would like to start negotiations early. Sullivan testified that he told Walker that he was ready to start negotiations at any time. However, Sullivan admitted that the Local did not respond to Walker's request to start early. Furthermore, there is no evidence that the Union sought to start negotiations prior to June 11.

On June 11 the Union wrote Respondent requesting negotiations. On June 29 the parties met at the first negotiations session. At that time the Union presented its proposals. According to the testimony of Robert Walker, the Union's June 29 proposed contract was exceedingly long.

In early August, Respondent countered with its own contract proposals. During the negotiations sessions of August 13, 14, 16, and 17, proposals from both parties were on the table. The Union's original proposal appears to contain some 48 separate articles.

Sullivan admitted that on August 17 the only matters left unresolved included wages, the merit system, dues checkoff, shift preference, and temporary transfers. During the August 17 session an agreement was reached on a number of items including payment of the 20-cent shift premium differential, a grievance procedure, and the length of the agreement.

Regarding the outstanding issues, the General Counsel, in his brief, points out that Respondent did not furnish its wage proposal until August 14—3 days before the contract expired at midnight on August 17.

The General Counsel also pointed to the temporary transfer issue in support of his argument. During negotiations Respondent argued that that provision should be changed to avoid confusion as to its intent—confusion which had already resulted in an arbitration case.

The General Counsel also pointed to the disagreement regarding the merit system. As to that issue, during negotiations the Union sought to eliminate the merit system provision of the contract on the assertion that the system was not working. In support of its argument, the Union pointed out that some senior employees had not reached the top pay for their classifications. Respondent argued that the system was working and insisted on retaining that provision.

I find nothing in the above matters which would contribute to a finding of surface bargaining. Although Respondent's wage proposal of August 14 gave the Union little time before the contract expiration, I must recall that the Union was offered an opportunity by Respond-

[3] A decertification petition (Case 26-RD-458) was filed with Region 26 on September 6, 1979. A stipulation for consent election agreement was approved by the Regional Director on October 2, 1979. An election was held on October 19, 1979. The tally of ballots of that election indicated there were approximately 205 eligible voters; 58 votes were cast for the Union, 70 votes were cast against the Union, and there were 36 challenged ballots which were determinative. Union objections were filed on October 26, 1979. A hearing was directed and held on December 10-14, 1979. However, no decision or recommendation issued as a result of that hearing. On February 7, 1980, an order issued dismissing the Case 26-RD-458 petition. A request for review was filed by Respondent on February 19, 1980. That request for review was denied by the Board on April 3, 1980, without prejudice to the petition being reinstated, but depending on the outcome of the instant proceeding.

ent to engage in early negotiations. Also, the Union's proposal of June 29 was extensive. Therefore, I do not find that Respondent was dilatory in making a wage proposal on August 14. As to the temporary transfer and the merit system provisions, I find nothing improper in Respondent's position.

The remaining question presented by the General Counsel—one that is alleged as violative by the complaint—was Respondent's proposal to change the contract's union dues-checkoff provisions. Respondent's proposal did not seek to eliminate dues checkoff but to change the provision to permit employees to revoke their checkoff authorization on 10 days' notice. I have examined the cases in this regard,[4] but I have found nothing which would warrant my finding a violation. Although Respondent insisted on its dues-checkoff proposal, it was during the same negotiations sessions agreeing to accept various union proposals and agreeing to change or drop proposals which it had made.

In the circumstances of Respondent's proposal there were no other factors which demonstrated, during the period before the strike, that Respondent was bargaining in bad faith.

Therefore, I find that, by proposing to amend the dues-checkoff provision to permit employees to revoke their authorization at any time with a 10-day notice, Respondent did not engage in conduct violative of the Act.[5]

2. The August 16, 1979, memo to employees

Robert Walker testified that he advised employees by an August 16, 1979, memo as follows:

> TO: All Employees of Walker Die Casting, Inc.
>
> SUBJECT: Company Plans
>
> As all of you know, we are currently negotiating with our Union a new contract to replace the one we now have, which expires at midnight, Friday, August 17th. It is the Company's intention to do all that is in its power to reach a mutually agreeable contract with the Union by the above date. We are confident that the Union negotiating committee will reciprocate.
>
> However, if a contract is not agreed on and there is a strike, the Company plans to operate the plant. Work will be available for any employees who wish to report. Employees, who are members of the Union, may want to resign from Union membership before crossing the picket line in order to avoid the possibility of a fine by the Union. You may resign by sending a ceritfied letter to the Union, with a copy to the Company.
>
> In the event of a strike by the Union, the Company plans to open for work on Tuesday, August 21, at 7:00 a.m., for anyone who desires to report.
>
> An announcement will be put on the radio on Sunday, August 19, stating the Union's decisions whether to accept or reject the contract.
>
> Anyone, who has any questions, may contact the Company on Monday, August 20th.
>
> /s/ R. H. Walker
> R. H. Walker, President

The General Counsel alleges that by that memo Respondent violated Section 8(a)(1) and (5) of the Act. I agree. By communicating directly with the employees, soliciting employees to refuse to honor a strike, if one is called, and advising its employees to resign from the Union to avoid a fine, Respondent engaged in violative conduct.[6]

3. Was the strike an unfair labor practice strike at its inception?

Although, as indicated above, Respondent engaged in an unfair labor practice on the day before the employees struck, the record contains no evidence that that unfair labor practice contributed to the strike.[7] In fact, the evidence which I credit demonstrates that the strike was caused by Respondent's failure to agree to a contract. Employee witnesses who attended the August 18 union meeting and were asked about that meeting testified that they were told by the Union that the strike would be an economic strike. There was no evidence indicating that Respondent's August 16 memo to employees was mentioned or that it constituted a contributing factor. Therefore, I find that the strike was, at its beginning, not an unfair labor practice strike.

B. *Allegations Regarding Activities During the Strike*

1. The 8(a)(1) allegations

a. *Allegations regarding Robert Walker*

(1) Threat not to reinstate

Cathy Becquet testified concerning some conversations she had with Plant Manager Walker regarding her returning to work after the strike began. Becquet testified that on September 12, 1979, she first called Plant Superintendent Kenny Atkisson and then President Walker regarding returning to work. Regarding her conversation with Walker, Becquet testified that she identified herself and told Walker that she would like to come back to work. Walker told her that he did not want to take her back, that he did not like the business with the scab list.[8] Walker told Becquet that he would check with his lawyer and see if he had to take her back. Becquet told Walker she did not think she had done anything wrong and needed to come back to work. Walker said that he

[4] *Markle Manufacturing Company of San Antonio*, 239 NLRB 1353 (1979); *Sweney and Company, Inc. v. N.L.R.B.*, 437 F.2d 1127, 1129 (5th Cir. 1971), enfg. in part 176 NLRB 208 (1969); *Longhorn Machine Works, Inc.*, 205 NLRB 685 (1973).

[5] *Midwest Casting Corporation*, 194 NLRB 523 (1971).

[6] *Lehigh Lumber Company, and Brown-Borhek Company*, 230 NLRB 1122, fn. 1 (1977).

[7] Compare *Larand Leisurelies, Inc.*, 213 NLRB 197, fn. 4 (1974).

[8] Becquet, and some of the other employees on the picket line, prepared a list of employees that had crossed the picket line and reported to work, and posted that list of employees on a board which was placed on the picket line.

did not want any union officers or committeemen and a few other people back in the plant.[9]

Pursuant to Walker's instructions, Becquet called Walker back on September 14. At that time, Walker told her that he was not taking her back to work and that she could take whatever action she wanted. Walker said that he had not gotten in touch with his lawyer but that he had decided that he was not going to take Becquet back. Becquet asked about a discharge slip so she could draw unemployment and Walker told her that he could not give her a paper, that he did not want her to draw unemployment. Walker told her that she had quit when she went out on strike. Walker said he was not going to take any of the union officers back again. Walker told Becquet that she was one of the ringleaders in the Union and that she was trying to break him or that they were trying to break him.

On September 23, after Becquet mailed Respondent a certified letter requesting reinstatement, Walker phoned her home. Walker told Becquet that she had placed him in an awkward position and that he had to take her back to work. Walker told her that she could come in on the second shift as a trim press operator and that she was to mind her own knitting. Walker also told Becquet that her seniority would start the following day when she reported to work—September 24.

Walker admitted telling Becquet that he did not want to take her back if he did not have to. Walker also admitted that he told Becquet that he did not want to take her back because she was involved in the incident regarding the sign which listed the names of those people who had crossed the picket line and returned to work.

I find Becquet to be a straightforward witness. In view of her testimony, and Walker's admission, I shall credit her testimony in full. I find Walker's statements to Becquet constitute threats not to reinstate employees because of the employees' union activities. I also find Walker's comment to Becquet that she was to mind her own knitting when she returned to work constitutes a violation of Section 8(a)(1).

Walker testified that the comment regarding Becquet minding her own knitting was intended as a warning to her not to get involved in other people's business and had no reference to union activity. However, I note that that comment was made in a context which would tend to give the impression to any reasonable person that Walker was referring to Becquet's union activities. Walker had on three occasions informed Becquet that he was unhappy with her because of her activities on the picket line and because of her other activities on behalf of the Union. Nothing was said in any of those conversations about Becquet interfering with other people's business. Therefore, I find that that activity also constitutes an 8(a)(1) violation.

(2) Threat to bust the Union

Wendell Pigg testified that while he was on strike, some 2 weeks after the strike began, he came in the plant to pick up his check. As he was picking up his check, he had a conversation with President Walker. Walker told Pigg that he would like for him to come back to work, that Pigg had done a good job in the past, and that Walker was satisfied with his work. Pigg replied that he was not planning to come back until things were settled. Walker then told Pigg that "he would—he was—he had liked to, or something to that nature, get rid of the Union—let me think—and some of the people in the Union. He said that if he did get rid of it he would like to run the company the way he had seen fit, or the way he would like to, and if the people that was working there wasn't satisfied that we could get a petition to get another Union and if we would like to. He said he would like to run it for at least a year."

When Robert Walker was questioned regarding Pigg's testimony, he testified that he did not recall making any specific statement to Pigg to the effect that he was trying to break up the Union. Walker testified that he would not have meant to put something in that kind of context. Then Walker went on to say, "Of course, I would say that I sat out as best I could once the strike started—we did want to win."

In view of Walker's testimony in this regard, I shall credit the testimony of Wendell Pigg, whom I found to be a straightforward, candid witness. I find that Walker's comments to Pigg constituted violations of Section 8(a)(1) of the Act.

(3) Promised higher wages

Stanley Galbraith testified about a conversation with Walker at the plant which, in his affidavit, he recalled as occurring on September 7. Galbraith testified that he went in to pick up his check and Walker told him that he would like for him to come back to work. Walker stated that they were going to make some changes and streamline the place of business, and that if Galbraith came back, they would give him a merit raise plus what was offered and that would bring him up to $4 an hour. Galbraith testified that Walker told him the employees under 45 days would be dismissed and there would be some other people replaced. Galbraith testified that he was making $3.45 an hour when the strike started.

I find Galbraith to be a straightforward witness and I credit his testimony in this regard. I find that Walker's comments to him constitute a violation of Section 8(a)(1) by offering higher wages as an inducement to abandon the strike.

(4) It was in no hurry to negotiate and close the plant

Ricky James testified that, while he was on strike, he went back to the Company and talked to Walker around the first week of October. James testified that Walker asked if he and Jimmy Skinner (who was also present) knew anything about the barn burning and the tire slashing. According to James, Walker told them that he was not in a great hurry to start back negotiating because the economy was slow and he already had enough people back to run the production that he needed to run. James testified that he believed that Walker said that, if he had

[9] Becquet had served as an alternate on the Union's negotiation committee and had been present during the negotiation and bargaining session.

to hire everybody in the Union back, he was in no hurry to start back the negotiations. Walker told Skinner that he could come back the next day, but as to James, Walker said there were some circumstances that made it look like James did have a lot to do with harassment, the barn burning, the tire slashing, and the harassment out there on the picket line. James testified that later during the conversation Walker said that, ever since Gary McClendon came in as union president, he had tried to run the Company and Walker said that he was not going to let McClendon run his Company; if he had to let him, he would shut the door.

Robert Wells testified that, while he was working at the plant, about 2 or 3 weeks before the October 19 election, he attended a meeting conducted by President Walker. Wells testified that Walker told them that, if the Union were voted back in before negotiations could resume, there would have to be something done about the tire slashing, the molten metal spilled on the floor, and the barn burning.

I find both James and Wells to be straightforward witnesses and I credit their testimony. I find Walker's comments regarding negotiations if he had to rehire employees from the Union and his threat to shut down the plant because of interference from the Union's president constitute an 8(a)(1) violation as alleged by the General Counsel.

(5) Lost seniority

When Cathy Becquet returned to work, she was told by President Walker that her seniority would start on the day of her return, September 24, 1979. As indicated below, I credit the testimony of Becquet in this regard. Respondent offered no explanation as to why a striking employee should be penalized by loss of seniority upon her return to work during the strike. Under the circumstances, I find in agreement with the General Counsel that Walker's comments to Cathy Becquet constitute violation of Section 8(a)(1) of the Act.

(6) Employees could not return to work until after the election

David Shearin testified that during the strike, toward the end of September, he went into the plant. Shearin testified that, while he was there, Walker told him that Respondent would be hiring again after the election. Michael Brewer testified that he received a notice from the Company indicating that he had quit to return to school. Brewer went into the plant and talked to Walker. Brewer told Walker that he had not quit to return to school. Walker told him not to worry about it, that it was a form of bookkeeping. Walker said that he did not have any work for Brewer at that time, but that he would contact Brewer if he had work on a part-time basis. Brewer testified that a few days before that conversation Walker told him that he did not have any work, but that Brewer was to call him after the election. Brewer testified that he attempted to vote in the October 19 election but that his vote was challenged by Respondent.

Dewey Rowe testified that he talked to Walker at Walker's home about 2 weeks before the election concerning Rowe's returning to work. Rowe testified that he asked Walker for his job back. Walker told him that after October 19[10] he could have his job back. According to Rowe, Walker went on to tell him that he was not planning on taking back the ones who stirred up trouble on the line.

The above comments by Walker clearly give the impression to employees that employment was being withheld pending the October 19 decertification election. Such an impression was corroborated by Respondent's challenge to the ballot of Michael Brewer. By those comments, Respondent was holding out to strikers that either their future employment was conditioned upon the outcome of the election or that employment was being withheld until following the election, in order to permit Respondent to limit the number of employees eligible to vote in that election. Therefore, I find that Respondent's comments tended to coerce employees in the exercise of Section 7 rights and are therefore violative of Section 8(a)(1) of the Act.

(7) Removing picket signs

Paul Rowe testified that he was manning the picket line on April 15, 1980. Rowe testified that he had left the picket line and returned to see that the picket signs were in order. As Rowe drove up to the line, he saw Robert Walker with one picket sign under his arm and pulling up the second picket sign. When Walker pulled the sign up, he looked and saw Rowe. Walker walked over with the picket signs and threw them in the back of Rowe's truck. Rowe got out and asked Walker if he was going to put the picket signs back. Walker walked over and pulled up a third sign and threw it into Rowe's truck. Rowe then said, "I guess you know you are going to put my signs back." Walker replied, "Paul, if you want your damn signs put up, you put them up."

Rowe also testified as to an incident he recalled occurring on April 25, 1980. Rowe testified he had left the picket line, but he circled the block and came back. When he drove up, he observed John Walker grabbing the picket signs and running into the plant with the signs.

Robert Walker admitted that he had pulled up the picket signs on the occasion recalled by Paul Rowe. Walker testified that he removed picket signs in order to let some boys who were mowing the right-of-way area, where the picket signs were staked, complete their mowing. According to Walker's testimony, he told Rowe that "you're lucky I don't take them up and tear them up every night." Walker admitted that he threw the signs in Paul Rowe's truck and did not replace them where they originally staked on the right-of-way property with joined property owned by Respondent.

John Walker did not testify.

I find the evidence supports the General Counsel's allegations regarding both Robert Walker and John Walker removing picket signs. I find that that activity on the part of Respondent tended to interfere with employ-

[10] The election was held on October 19, 1979.

ees' rights and is therefore violative of Section 8(a)(1) of the Act.

(8) Surveillance

Employees Paul Rowe and Karen Wells testified that they observed Robert Walker drive by the union hall on several occasions on Sunday afternoon around 4 p.m. when union meetings were being conducted. Wells testified that she attended most of the union meetings and that on practically every occasion she had seen Walker drive by around the time the meeting was being conducted. Wells testified that on one occasion she observed Walker drive past the hall on three different occasions during the same union meeting.

Robert Walker admitted that he has driven by the union hall on Sundays and has observed employees there for, what he believed to be, union meetings. Walker was asked what reasons he had for driving by the meetings and he testified that it just happened that his son lives down Route 2 and that the street passing the union hall is a "pretty good ways for me to go if I want to go out there and see [my son]." Walker admitted that he knew when the union meetings were held. Walker offered no explanation as to why it was necessary to drive by the union meeting on three occasions on the same Sunday during a union meeting.

In determining this particular issue, I credit the testimony of Karen Wells and Paul Rowe, both of whom I found to be straightforward witnesses. I find Robert Walker's testimony does not adequately explain, or support, his basis for driving past the union hall during union meetings on such numerous occasions. I find that his activities in that regard tend to interfere with employees' Section 7 rights and constitute violations of Section 8(a)(1) of the Act.

b. *Allegations regarding Kenny Atkisson; informed employees they would not be allowed to return to work until after the election*

Alfred W. Jett testified that while he was on strike around October 10, 1979, he talked to Kenny Atkisson about returning to work. Jett testified that Atkisson told him that everything was slack and that everybody would be back to work as of October 19. Atkisson was not called to testify. Therefore, I credit the testimony of Jett.

In view of my findings above regarding the similar comments made by Robert H. Walker, I find that Atkisson's comments constitute a violation of Section 8(a)(1) of the Act.

c. *Allegations regarding Joe Wakham; no more contracts*

Herman Sparks testified that he was out on the picket line during September when Supervisor Joe Wakham came out to the picket line. Wakham asked Sparks to help him pick up "nails or tacks or whatever." Wakham asked Sparks, "Why don't you boys come back to work?" Sparks replied that they could not come back until they had a contract. Sparks testified that Wakham told them, "You may as well come back, there won't be any more contracts." Sparks testified that he told Wakham that he felt they should get one. Wakham again responded that "there won't be" and then he went into the plant.

Wakham did not testify. Therefore, I credit the testimony of Sparks. I find that Wakham's comments to him constitute a violation of Section 8(a)(1) of the Act.

d. *Allegations regarding Buford Agent*

Herman Sparks testified that he returned to work around September 28, 1979. On the day Sparks returned to work his assistant foreman on the second shift, Buford Agent, talked to him at his machine. Sparks testified that Agent told him that, after the Union got out, they were going to have a good place to work. Agent did not testify. Therefore, I credit the testimony of Sparks. I find that Agent's comments to Sparks constitute a violation of Section 8(a)(1) of the Act.

2. The 8(a)(3) allegations[11]

a. *The probationary employees*

On September 4, 1979, Respondent, through Robert Walker, mailed the following letter to all its employees who had not completed their probationary period and who had not returned to work since the Union's August 18 strike:

> TO: All Walker Die Casting Employees who have not completed their probationary period and who have not returned to work since the union's strike against the Company began on August 18, 1979:
>
> Due to the present general economic conditions, the Company is cutting the number of people on the work force. Therefore, effective September 5, 1979, the Company is terminating the employment of all members of the work force who have not completed their probationary periods and who have not returned to work since the strike began.
>
> If you are among these people terminated, you may apply for re-employment as permanent replacements for other employees who have not returned to work.
>
> Sincerely yours,
>
> WALKER DIE CASTING, INC.
>
> /s/ Robert H. Walker
>
> Robert H. Walker, President
>
> Encl.—Separation Notice

The General Counsel alleges that by terminating its probationary employees on September 4, 1979, Respondent violated Section 8(a)(3) of the Act.

[11] Although the following incidents are alleged as both 8(a)(3) and 8(a)(1) violations, the primary basis on which the General Counsel rests his claim of motivation as to most of the alleged discriminatees is the fact that those alleged discriminatees did not report to work during the strike. Therefore, technically an argument could be advanced that those matters involved only alleged 8(a)(1) violations. However, the strike was called by the Union. Therefore, I have extended my findings to include finding both 8(a)(3) as well as 8(a)(1) violations on the determination that, by honoring the union-sponsored strike, the employees were engaged in union activity.

It appears from the September letter itself that Respondent is directing its action to all those employees who observed the Union's strike. That assumption is borne out by documents submitted into evidence by Respondent which indicate that all the probationary employees except employee Charlie R. Williams was terminated through Respondent's September 4 letter.[12] The document indicates that Charlie R. Williams returned to work on August 30, 1979. Williams was not terminated.

The record reflects that, even though Respondent terminated the probationary employees by its September 4 letter, there was work available in the plant. In fact, several employees, including Wendell Pigg, Karen Wells, and Robert Wells, testified that during that period of time they were being asked by representatives of Respondent, including Robert Walker, to return to work. Moreover, Respondent offered no evidence demonstrating that it had a sound business reason for terminating the probationary employees on September 4.

Therefore, I find that Respondent violated Section 8(a)(1) and (3) of the Act by terminating all its probationary employees who had not returned to work prior to September 4, 1979.[13]

b. *Cathy Becquet*

Cathy Becquet testified that she went out on strike with the other employees on August 18. At the time of the strike she was an alternate on the negotiation committee and was shop steward in the zinc department. Becquet testified that she attended all the negotiating sessions with Respondent.

On September 12, Becquet called Plant Superintendent Atkisson and asked if she could return to work. Atkisson responded that they did not need her then and that she should check back with him on Friday. Becquet then immediately called Robert Walker[14] and told him that she wanted to return to work. Walker told her that he had talked with Atkisson and that he did not want to take her back. Walker told her that he "didn't like that business with the scab list, and that he was going to check with his lawyer to see if he had to take Becquet back." Walker also told Becquet that he did not want any union officer or committeeman and a few other people back in the plant.[15]

Pursuant to Walker's instructions, Becquet called back on Friday, September 14, and talked to Walker. Walker told her that he was not taking her back. Becquet asked if she could get a discharge slip so that she could draw unemployment. Walker responded that he did not want her to draw unemployment. Walker then told Becquet that she had quit when she went out on strike. Walker said that he was not going to take any of the union officers and committeemen back again. He said that Becquet was one of the ringleaders in the Union and that she was trying to break him, or that they were trying to break him.

Subsequently, Becquet sent Respondent a certified letter stating that she was willing to return to work unconditionally.

On September 23, Walker called Becquet at her home and told her that she had put him in an awkward position and that he had to take her back to work. Walker told her that she could come in at 3:30 on September 24—the second shift. Walker told her that she would be getting a 32-cent-per-hour increase plus 20-cent shift preference and that seniority would start on September 24. Becquet asked Walker how long she would be on the second shift.[16] Walker told her maybe after the election in October; if there were an opening on days, they would talk about switching her to the first shift. Becquet testified that she asked him why she was on the second shift, why she could not work days because she had five children and it was really difficult for her to work second shift. Becquet told Walker that she had been on the day shift for 3 years. Walker told her that he had no openings and that he was offering her the second shift if she wanted that.

Becquet testified that, when she received her first check, she received the additional 32 cents per hour plus the 20-cent shift differential plus an additional 10 cents for being present each workday.

On November 2, Becquet was told that her father had suffered a stroke while in California. On November 3, Becquet requested her vacation and a leave of absence beginning November 7 for the purpose of going to her father in California. Becquet was told by Plant Superintendent Atkisson that he would have to check with Walker.

On Monday and Tuesday, November 5 and 6, Becquet attempted to contact Atkisson regarding her request for time off. However, on each of these occasions Atkisson was not in the plant. On November 6, Becquet checked with Assistant Plant Superintendent Lynn Chewning. Becquet talked with Chewning twice on that day. On the second occasion, according to Becquet's testimony, Chewning told her that she could go ahead and go, that he would work it out when she got back. As Becquet was leaving, she reminded her foreman, Wesley Lang, that she would not be there the next day. Lang responded that he had heard that she was going on a leave of absence. Lang said that he hoped Becquet's father would be all right.[17]

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[12] Uncontested evidence demonstrates that Respondent terminated probationary employees Dickie Adkins, Lacon Crossland, Sam Cook, Michael Cross, Robert Hayes, Michael Holder, Larry Jones, Jimmy Prince, Larry Peters, E. W. Woodward, and David Wentzell on September 5, 1979.

[13] See *Freezer Queen Foods, Inc.*, 249 NLRB 330 (1980); *N.L.R.B.* v. *Great Dane Trailers, Inc.*, 388 U.S. 26 (1967); *National Seal, Division of Federal-Mogul-Bower Bearings, Inc.*, 141 NLRB 661 (1963), enforcement denied 336 F.2d 781 (9th Cir. 1964).

[14] Several of Becquet's conversations with Walker were also considered *supra*, under the section dealing with 8(a)(1) allegations.

[15] Becquet and several other employees on the picket line prepared a board which listed all the employees that had crossed the picket line and returned to work.

[16] At the time of the strike Becquet was assigned to the first shift. Although the General Counsel alleged that Becquet was assigned more onerous conditions of employment on September 24, I find that the General Counsel proved that allegation only as to Becquet's employment without benefit of her prior seniority. Even though Becquet was assigned to the second shift, the General Counsel did not prove the availability of work on the first shift for Becquet on September 24.

[17] Testimony of Becquet concerning her conversation with Atkisson and Lang stands unrebutted. Neither Atkisson nor Lang testified.

Becquet returned home from California on Thanksgiving evening. She discovered that attached to her paycheck, which her husband had picked up at the plant on November 16, was a dismissal slip.

Becquet went to the plant the following Tuesday, November 27, and talked with Plant Superintendent Atkisson. Becquet asked Atkisson why she had been fired. Atkisson told her "that there was a different work situation in the plant at that time; when I left they had plenty of work, and when I came back they didn't have any work, they had lost a lot of orders and contracts, and that they were contemplating a layoff." Becquet then asked Atkisson why she had not been laid off and did not her seniority count. Atkisson responded that that was the way Walker wanted it. Becquet told Atkisson that she had checked with Lynn Chewning because Atkisson was not there and that Chewning had told her to go ahead and go. Atkisson told her that she should talk to Walker about that. Atkisson then commented that she had been a good worker and that he would give her a good reference.

Becquet then went to see Walker and asked Walker why she had been fired. Walker told her that she did not get permission to leave, that he had checked with everyone and that no one had given her permission to leave. Becquet then asked if he had checked with Lynn Chewning. Walker told her no, but that he would talk with Chewning. He then asked Becquet to leave the office.

Becquet was called back in the office a few minutes later. Becquet asked what Chewning had said. Walker said that Chewning said that he did not give Becquet permission to go. Walker told her that it would have to stand the way it was. Becquet then asked Walker about going back to work or getting a layoff slip. Walker told her that he did not want her drawing unemployment on him. Walker said something about her husband not being able to work in this area and asked why did she not move to California.

In considering the merits of the allegations that Becquet was discharged in violation of Section 8(a)(3), I credit her testimony. In determining to credit Becquet, I was impressed with her demeanor. As to conflicts between her testimony and that of Respondent's witnesses, I note that Plant Superintendent Atkisson did not testify. Therefore, her testimony regarding conversations with Atkisson stands unrebutted. In regards to conflicts with Becquet and President Robert Walker, I find Walker's testimony in that regard to be incredible. I find particularly incredible Walker's testimony as to the reasons why Becquet was discharged around November 16. In that regard, Walker testified that Plant Superintendent Atkisson told him that Becquet said she wanted a leave of absence to go to California to be with her father who was ill. Walker testified that he and Atkisson discussed the matter and decided to grant Becquet the leave of absence. However, according to Walker, Becquet was discharged because she left on her trip for California without contacting Atkisson. Walker went on to testify that they felt that, if they permitted Becquet to leave without checking back with Atkisson, they would have set a precedent. Walker's version of the events does not explain why Respondent could not get word to Becquet on either Monday or Tuesday, following her request for a leave of absence, that that leave of absence had been granted. Under the evidence available to me, it is uncontested that Atkisson was not in the plant while Becquet was present on either Monday or Tuesday. Obviously, under those circumstances, Atkisson was well aware that it was impossible for Becquet to contact him personally. No explanation was offered why Atkisson, under the circumstances, did not simply leave word for Becquet that her leave had been approved. Therefore, I am convinced that Walker's testimony that they discharged Becquet because she failed to check back with Atkisson is not worthy of belief.

As to the conflicts between Becquet's testimony and the testimony of Assistant Plant Superintendent Lynn Chewning, Chewning admitted that Becquet asked him on several occasions, including the day before she left for California, whether her request for a leave of absence had been approved. Chewning testified that, in circumstances like that regarding Becquet, he would "probably state that it would be OK with me, but she would have to check with either Mr. Walker, or Kenny Atkisson." He was asked if that was what he said to Becquet and Chewning responded, "I presume it was." On cross-examination, Chewning testified that he could not recall whether Atkisson was present in the plant on those occasions when Becquet asked Chewning if her leave of absence had been approved. Chewning testified that he did not have authority to grant a leave of absence, but he also testified that during Atkisson's absence from the plant he took over Atkisson's duties and responsibilities. Therefore, as in the case of Walker, I find Chewning's testimony incredible. If Plant Superintendent Atkisson was not present, and the unrebutted testimony is to the effect that he was absent, the normal thing for Chewning to have done would have been to go to whatever sources he needed to contact, either Walker or Atkisson, and secure an answer to Becquet's question about approval of her leave. No explanation was offered as to why this was not done. Additionally, I note that there is a conflict between the testimony of Chewning and Walker. According to the testimony of Chewning, Cathy Becquet's request for a leave of absence was not approved. However, Walker testified that the matter had been approved. Therefore, I find that I cannot credit the testimony of either Walker or Chewning to the extent that their testimony conflicts with that of Becquet.

In determining the allegation regarding Cathy Becquet, I note that, when she was reinstated, pursuant to her request, on September 24, she was informed that her seniority would only run from that day—September 24, 1979. Respondent offered no business justification for treating Becquet as a new employee regarding seniority. Under the circumstances, I find that Becquet was denied proper reinstatement[18] even though she was placed back

[18] In view of my finding below that the strike was converted to an unfair labor practice strike on August 27, Becquet was entitled to immediate reinstatement from September 12, the date of her unconditional offer. Becquet should have been reinstated without loss of seniority. (*N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938).)

to work on September 24, due to her participation in the strike which began on August 18. Therefore, since Becquet was never properly reinstated, she was entitled to full remedies as an 8(a)(3) discriminatee from September 12, 1979.

Additionally, I find that Becquet's discharge on or about November 16, 1979, was due to her union activities. The circumstances convinced me that Respondent's asserted bases for her discharge were pretextual. In that regard, I notice that representatives of Respondent gave conflicting opinions as to the basis of Becquet's discharge.[19] Plant Superintendent Atkisson informed Becquet that she was discharged because during her absence there had been a reduction in available work and she was no longer needed. However, President Walker testified that Becquet was discharged because she failed to recheck with Plant Superintendent Atkisson in order to determine whether her request for a leave of absence had been granted. Moreover, under the circumstances set out in the testimony of Walker, I find the evidence convincing that Walker's testimony did not reveal the true reason why Becquet was discharged. I am unconvinced that no valuable employee, like Becquet, would be discharged for failing to recheck with the plant superintendent regarding a request for a leave of absence under the circumstances present in her case. The record stands uncontested that Atkisson was not present during the last two periods Becquet worked prior to leaving for California. It was apparent to Atkisson and Walker that Becquet had a real need to leave during the time requested. It was also apparent that Atkisson could have easily left word with Chewning or any other official that Becquet's leave had been approved.

In view of my findings that conflicting versions were given as the bases for Becquet's discharge, and my findings at the bases asserted were pretextual, I am convinced, and find, that the true reason why Becquet was discharged was her union activities.

C. *The refusal to reinstate*

The complaint alleges that certain employees listed below on Appendix A made unconditional offers to return to work, but that Respondent has failed and refused to reinstate those employees.[20]

The evidence supports the General Counsel's allegation as to specific employees mentioned in General Counsel's Exhibit 11 plus employees Cathy Becquet and Michael Wayne Brewer.[21] Additionally, all striking employees were entitled to reinstatement upon the unconditional offer made on their behalf by the Union on February 11, 1980.[22]

In view of my findings below that the strike was converted to an unfair labor practice strike on August 27, 1979, each striking employee is entitled to immediate reinstatement upon an unconditional offer to return to work. The evidence indicates that many of the employees who unconditionally offered to return have not been reinstated. In that regard, striking employees are entitled to preference in employment over persons employed on or after the date the strike was converted to an unfair labor practice strike.[23]

Therefore, I find that those employees listed on Appendix A who were denied proper or timely reinstatement were deprived of their rights in that regard in violation of Section 8(a)(3).[24]

3. The 8(a)(2) allegations

Wendell Pigg testified that in a meeting before the October 19 election Robert Walker told the employees at that meeting that he would like to try running the plant with a committee to take care of the problems they would have and that he would like to try that for 1 year and then, if the people were not satisfied, he would agree to a petition for another union. Pigg also testified that Walker said that the committee would be made up of some employees there inside the plant and that any of the problems brought up would be brought up before them (the committee) and that they would take care of it.

Pigg testified that a committee was established some 4 to 6 weeks prior to June 16, 1980—the date he testified at the hearing herein. Pigg testified that one of the employees on the committee was Johnny Flippen, an employee who works with Pigg.

On December 19, 1979, Respondent posted a notice to employees in its plant which stated, in part:

> TO: OUR EMPLOYEES
>
> FROM: R. H. WALKER
>
> Immediately upon our return to work on January 2, 1980, we will begin discussing how to set up representation for our employees and procedures to handle grievances. You will recall a notice posted on the bulletin board on October 11, in which we said "it will be up to our employees as to how rep-

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[19] *Sam and Margaret Foods, Inc., d/b/a Clock Restaurant No. Seventeen*, 212 NLRB 432 (1974).

[20] By amendment near the close of the hearing, the General Counsel expanded his allegation in par. 16 of the amended consolidated complaint to include all employees listed on G.C. Exh. 11 (a compilation of unconditional offers received by Respondent). Additionally, by that amendment, the General Counsel alleged that the Union made an unconditional offer to return all strikers by letter dated February 11, 1980.

[21] As to Becquet and Brewer, see footnotes on Appendix A, below.

[22] Of course, each striking employee is entitled to reinstatement on the basis of the earliest unconditional offer made by him or on his behalf.

[23] *Mastro Plastics Corp., et al.* v. *N.L.R.B.*, 350 U.S. 270, (1956).

[24] Respondent discharged a number of striking employees on the assertion that those employees were, according to Respondent's information, employed by another employer during the strike. Although not specifically alleged as violative of Sec. 8(a)(3), that issue bears upon the allegation of refusal to reinstate. In order to justify the discharge of striking employees, the employer has the burden of establishing legitimate and substantial business justification for its action. "[U]nless the employer who refuses to reinstate strikers can show that his action was due to 'legitimate and substantial business justifications,' he is guilty of an unfair labor practice. *N.L.R.B.* v. *Great Dane Trailers*, 388 U.S. 26, 34 (1967). The burden of proving justification is on the employer. *N.L.R.B.* v. *Fleetwood Trailer Co., Inc.*, 389 U.S. 375, 378 (1967)." See *Bromine Division, Drug Research, Inc.*, 233 NLRB 253, 261 (1977). No probative evidence was offered in justification of Respondent's discharge of those employees. Therefore, I find that those persons retain their status as employees and, if they were included as strikers who made, or upon whose behalf the Union made, an unconditional offer for them to return to work, are also entitled to immediate and full reinstatement.

resentation and grievance procedures may be set up and handled after the election."

Please be thinking about how you would like to see this done. The Company feels if we have the input of everyone we can work out an organization which will be efficient and fair for all of us.

R. H. Walker

On May 9, 1980, Respondent posted another notice to employees which stated as follows:

HOTLINE!

May 9, 1980

TO: OUR EMPLOYEES
FROM: R. H. WALKER

We are now setting up a temporary grievance procedure which we plan to use until our lawyer advises we can set up a permanent, more formal, grievance procedure without risk of committing an unfair labor practice. The following employees have agreed to serve as the temporary grievance committee:

Johnny Flippen	Walter George
Steve Wakham	Allen Goodrich
Vivian Whitworth	

This committee has elected Johnny Flippen, Chairman; Walter George, Vice-Chairman; and Vivian Whitworth, Secretary. Kenneth Atkisson, Lynn Chewning, and R. H. Walker are working with this committee to set up the procedure which we will use to process grievances.

We will continue to operate, as we promised, according to the rules and procedures of the old contract, as modified by the Company's last offer to our employees. All members of the grievance committee have copies of this and we have copies in the office for anyone desiring one. As soon as we have the temporary grievance procedure worked out, we will prepare copies of it, as well as our rules and other procedures, and distribute one copy to each employee.

/s/ Robert H. Walker

Then, on June 6, 1980, Respondent distributed the following notice to employees:

TO OUR EMPLOYEES

With the checks which you receive today, we are enclosing a copy of our Temporary Grievance Procedure. Your Company wants to know your grievances, problems or complaints so we may take action to rectify them or prevent them from happening again. It is the feeling of your Company that the Temporary Grievance Procedure is an additional means which will help to make it easier for you to let us know what your problems, complaints and grievances are or may be. We hope very much that you will always let us know what problems exist for we cannot correct a problem we are not aware of. You can be sure that we will do our best to correct and rectify problems, grievances and complaints and continue to strive to make Walker Die Casting the best place to work which can be found.

/s/ Robert H. Walker
Robert H. Walker, President

Walker testified that the above June 6, 1980, notice was distributed to employees with their paychecks.

Robert Walker testified that the employee members of the grievance committee were asked to serve on that committee by him. Walker testified that the committee has held a number of meetings and that, in addition to the members of the committee, Assistant Plant Superintendent Lynn Chewning and he (Robert Walker) were present at the meetings. Minutes of the meetings were typed by Respondent's receptionist. Walker testified that members of the committee were paid for the time they spent in committee meetings.

Walker admitted that employee complaints were brought up during this meeting and matters relating to employees' working conditions were discussed. Walker testified that some of those problems relating to employees' working conditions were remedied as a result of steps directed by supervision, following discussing of those problems during committee meetings. During one of the committee meetings, matters relating to employees' vacations were discussed and a procedure was established whereby an employee could take extra days of vacation whenever a week's notice was given.

I find that, in accord with the above evidence and the record as a whole, Respondent did recognize and bargain with the committee of employees established by it. The committee was established around May 9, 1980, and the evidence indicates that Respondent has continued to recognize and negotiate with the committee since that time. I find in agreement with the General Counsel that Respondent's actions in that regard constitute a violation of Section 8(a)(2) of the Act.[25] In view of evidence that there were no negotiations between the Union and Respondent after September 11, 1979, and my finding below that Respondent was obligated to continue to recognize the Union, I find in agreement with the General Counsel's complaint allegation that Respondent also violated Section 8(a)(5) by unilaterally implementing the employee committee.

4. The 8(a)(5) allegations

a. *Withdrawing its last offer*

By memo dated August 20, which Robert Walker posted on the bulletin board and mailed to all striking employees, Respondent notified employees of the details of its last contractual offer, suggested that the employees

[25] *N.L.R.B.* v. *Cabot Carbon Company and Cabot Shops, Inc.*, 360 U.S. 203 (1959); *The Carpenter Steel Company*, 76 NLRB 670 (1948); *Wahlgren Magnetics, a Division of Marshall Industries*, 132 NLRB 1613 (1961); *Thompson Ramo Wooldridge, Inc. (Dage Television Division)*, 132 NLRB 993 (1961); *Oil Transport Company*, 182 NLRB 1016 (1970); *STR, Inc., d/b/a Sound Technology Research*, 221 NLRB 496 (1975), enfd. 549 F.2d 641 (9th Cir. 1977).

should inform the negotiating committee if they felt Respondent's offer was reasonable, and offered to pay any employee who reported to work the new wage rates proposed by the Company.

On August 27, 1979, Respondent sent the following letter:

> Mr. Gary McClendon, President
> Local No. 259, Stove, Furnace and Allied Appliance Workers' Union
> RFD #2
> Cornersville, TN 37047
>
> Dear Mr. McClendon:
>
> The final proposal which was made to you and the members of your negotiating committee on August 17, 1979, was contingent on acceptance of that offer without a work stoppage.
>
> Since Local 259 elected to reject that offer and calls a strike on August 18, 1979, the Company's last offer is hereby withdrawn.
>
> Yours truly,
>
> WALKER DIE CASTING, INC.
>
> /s/ Robert H. Walker
> Robert H. Walker, President

The General Counsel alleged that, by withdrawing its last offer on August 20, Respondent violated Section 8(a)(1) and (5). I agree with the General Counsel. While Respondent's obligations under Section 8(a)(5) are limited, both the courts and the Board have continuously held that employers have an obligation to negotiate in good faith. The parties negotiated in progressive fashion throughout August. Although the employees decided to strike when the past contract expired on August 18, that act did not release Respondent from its obligation to continue to bargain in good faith. However, Respondent, by the above-quoted letter, effectively terminated negotiations.

The Board in the case of *Randle-Eastern Ambulance Service, Inc., etc.*,[26] found that an employer violated Section 8(a)(5) by withdrawing all its contract proposals. In *Randle-Eastern*, the employer withdrew its proposals during a negotiation session in which it, the employer, offered to present a new proposal which would include an entire package. Here, Respondent made no such offer. Respondent's letter offered nothing more than removal of its entire negotiation package—in effect, Respondent rescinded all the progress achieved during its summer negotiations with the Union. Moreover, while it rescinded the negotiation progress, Respondent made no offer to negotiate further. The record shows that as late as June 19, 1980, when this hearing closed, Respondent had not resumed negotiations with the Union.

It is true that an RD petition was filed and processed during the interval between Respondent's August 27 letter and June 19. However, that petition which was filed on September 6, 1979, was dismissed by the Region on February 7, 1980. Nevertheless, no negotiations have occurred since that date.

During the interval since February 7, Respondent formed a labor organization among its employees. (See sec. B,3, above.)

Under those circumstances, I find the evidence persuasive that Respondent, by its August 27 letter to the Union, engaged in bad-faith bargaining in violation of Section 8(a)(5).

b. *Unilateral changes*

The General Counsel alleged that Respondent unilaterally implemented a wage increase in excess of those offered during negotiations. Undisputed evidence supports that allegation.

As indicated above in section B,1,a,3, I found that Respondent violated Section 8(a)(1) by offering striking employees higher wages as an inducement to break the strike and return to work. President Robert Walker admitted that he decided to raise the starting pay to a minimum of $4 an hour after the strike commenced on August 18, 1979. Walker testified that the increased minimum rate went into effect on September 5, 1979.

There is no dispute regarding the General Counsel's contention that the $4 minimum starting rate was in excess of what Respondent offered during negotiations. Respondent, in its brief, admits that Respondent's August 14, 1979, economic proposal proposed a $3.30-per-hour minimum rate. However, Respondent argues that the Union evidenced no interest in negotiating a minimum starting rate and that, in any event, the Union waived any claim of unilateral minimum rates because Respondent had during the existence of the bargaining agreement, which expired in August 1979, regularly employed few employees at rates above those set forth in the agreement. The contract provided starting rates ranging from $2.40 to $3 per hour, but Respondent regularly hired employees from $3.30 to $3.40 per hour and employed some new die casters at rates as high as $4 and $4.15 per hour approximately 30 days before the strike. The Union admittedly knew Respondent hired employees at higher rates.

President Walker, when he admitted that Respondent decided to pay $4 as a minimum starting rate, testified that he did so in order to get better employees.

The General Counsel also alleged that Respondent unilaterally implemented an attendance bonus and unilaterally made the attendance bonus applicable on a weekly basis, then changing it to monthly, and back to weekly again. Respondent points out that it did propose a monthly attendance bonus of 10 cents per hour during negotiations. However, Respondent does not contest that it did implement a 10-cent-per-hour monthly attendance bonus after the strike which was expanded to include giving company jackets to employees who earned the attendance bonus in December 1979. In January 1980, Respondent began paying the bonus on a weekly basis. Neither the awarding of jackets nor the change from monthly to weekly basis of computing the attendance bonus was mentioned during negotiations with the Union.

[26] 230 NLRB 542 (1977), enforcement denied in part 584 F.2d 720 (5th Cir. 1978).

Both the Board and the courts have expressed concern with an employer's ability to undermine the negotiations process through unilateral changes. That concern has been voiced especially in situations involving wage increases where the increase is contemporaneous with a strike.[27] Such unilateral action is a strong indication that the employer is not bargaining with the required good faith.

I find the circumstances here particularly alarming in that regard. Upon its employees striking over the parties inability to reach a collective-bargaining agreement because of disputes involving, among other things, wages, Respondent, on August 27, withdrew completely its last proposal. Shortly thereafter, on September 5, Respondent, without further negotiations or notice to the Union, instituted a minimum wage substantially higher than its offer to the Union during negotiations.

I find little support for Respondent's arguments in defense of its unilateral actions. Although the Union had, during harmonious relations, during existence of the last agreement, permitted minimum rates in excess of the contract provisions, there is no indication that the Union intended thereby to waive its right to bargain over wages. In fact, just the opposite occurred. During August the Union and Respondent negotiated with respect to wages. Moreover, I place little significance in testimony from Respondent that the Union showed little interest in negotiating the minimum rates. Obviously, a union is more concerned from a tactical standpoint, during negotiations, with first reaching agreement on the higher level of wages. Since the parties had not agreed on those higher levels, I do not find it surprising that the Union appeared uninterested in discussing the minimums. I do not view that testimony as demonstrating that the Union had no interest in negotiating minimum rates, especially since the last contract contained minimum rate provisions. Therefore, I find that the Union did not waive its bargaining rights regarding minimum wages.

No evidence was offered which would demonstrate that the Union ceased to be the exclusive representative of the unit employees.[28] Respondent, by implementing changes in its minimum rates, changing the attendance bonus system, and awarding company jackets to employees that earned the attendance bonus, without first notifying the Union and offering to negotiate those items, engaged in unilateral acts in violation of Section 8(a)(5).

c. *Refusal to bargain since September 1, 1979*

Respondent does not dispute that it notified the Union on September 11, 1979, that no further negotiations could be scheduled until the petition in the recently filed decertification case was resolved.[29]

The law is clear that the filing of a decertification petition is not sufficient basis to justify an employer's refusal to bargain when, as here, Respondent's action occurred in context with unlawful conduct.[30] Respondent's September 11 termination of negotiations occurred in a context of numerous 8(a)(1) and (5) violations. As shown above, Respondent violated Section 8(a)(1) on various occasions before September 11, and Section 8(a)(5) on August 16, when it advised its employees to resign from the Union and cross the picket line. On August 27, Respondent illegally withdrew its last contract offer. On September 5, Respondent unilaterally instituted an illegal increase in its minimum wage rate. In this regard, I note that President Walker actually suggested to employees that he would like to get rid of the Union. (See above.) "Such conduct directly affected all unit employees and could have reasonably been predicted to cause employee disaffection." *Autoprod, Inc., supra.*

No negotiations have occurred since Respondent terminated negotiations on September 11. Moreover, its subsequent illegal conduct, especially its recognition of another labor organization in May 1980, is totally incompatible with its obligation to negotiate with the Union.

Additionally, no evidence was offered which demonstrated that, when Respondent terminated negotiations, reasonable grounds existed for believing that the Union had lost its majority status. *Autoprod, Inc., supra* at 779.

Therefore, I find that Respondent, by terminating negotiations on September 11, and thereafter continuing to refuse to negotiate with the Union, violated Section 8(a)(5) of the Act.

C. *Was the Strike Converted to a ULP Strike?*

Under the circumstances herein, I find the evidence proves that the employees' strike was converted to an unfair labor practice strike on August 27, 1979, when Respondent withdrew its last contract proposal.

Repondent's action on that occasion and subsequently, as outlined above, seriously impeded the success of the negotiations and thus prolonged the strike and its settlement (*Randle-Eastern Ambulance Service*, 230 NLRB 542).

Conclusions of Law

1. Respondent, Walker Die Casting, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 259, Stove, Furnace, and Allied Appliance Workers' International Union of North America, AFL-CIO, and Employee Committee are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent, by threatening not to reinstate employees because of the employees' union activities; threatening employees that they were to mind their own knitting when they returned to work because of their union activities; threatening to get rid of the Union; offering wage increases in order to induce its employees to break the strike and return to work; telling employees that, if it had to reinstate everybody in the Union, it was in no hurry to start back to negotiations; threatening to shut the door of the plant rather than continuing to deal with the union president; telling its employee that, by returning to work after engaging in the strike, she had lost her seniority status; informing employees that they would not be considered for employment until after the decerti-

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[27] See *N.L.R.B.* v. *Fitzgerald Mills Corporation*, 313 F.2d 260 (2d Cir. 1963); *Trinity Valley Iron and Steel Company, etc.*, 127 NLRB 417 (1960).

[28] See sec. B,4,c, below.

[29] See fn. 3, *supra.*

[30] *Autoprod, Inc.*, 223 NLRB 773 (1976); *Lammert Industries, a division of Componetrol, Inc., etc.*, 229 NLRB 895 (1977).

fication election; removing its employees' picket signs; engaging in surveillance of its employees' union activities; threatening its employees that there would be no more collective-bargaining agreements with the Union; and telling its employees that they would have a good place to work once the Union was defeated, violated Section 8(a)(1) of the Act.

4. Respondent, by discharging its probationary employees on or about September 5, 1979; by refusing to reinstate its employee Cathy Becquet on September 12, 1979, by refusing to reinstate Cathy Becquet on September 24 without loss of seniority privileges, and discharging Cathy Becquet on November 16 because of her union activities; and by refusing to reinstate its employees, who were engaged in an unfair labor practice strike, following unconditional offers to return to work by or on behalf of those employees, violated Section 8(a)(3) and (1) of the Act.

5. Respondent, by soliciting and appointing employees to an employee grievance committee, and recognizing and bargaining with the Employee Committee since on or about May 9, 1980, has dominated and interfered with the formation or administration of a labor organization in violation of Section 8(a)(2) and (1) of the Act.

6. Respondent, by advising its employees to resign from the Union; by withdrawing its last contract proposal; unilaterally changing its minimum wage rates; unilaterally changing other conditions of employment; unilaterally establishing an employee grievance committee; and by refusing to negotiate with the Union since September 11, 1979, violated Section 8(a)(5) and (1) of the Act.

7. The strike among Respondent's employees which commenced on August 18, 1979, was converted to an unfair labor practice strike by Respondent's unfair labor practices on August 27, 1979.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (2), (3), and (5) of the Act, and having found that the strike of Respondent's employees was converted to an unfair labor practice strike on August 27, 1979, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act. My recommended Order will require Respondent to offer employees Cathy Becquet, Dickie Adkins, Lacon Crossland, Sam Cook, Michael Cross, Robert Hayes, Michael Holder, Larry Jones, Jimmy Prince, Larry Peters, E. W. Woodward, David Wentzell, and those employees named in Appendix A, reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges. I shall further recommend that Respondent be ordered to make whole the employees mentioned above for any loss of earnings they may have suffered as a result of the discrimination against them,[31] and that it post appropriate notices. Loss of backpay shall be computed and interest thereon shall be added in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[32]

Upon the foregoing findings of fact and conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

ORDER[33]

The Respondent, Walker Die Casting, Inc., Lewisburg, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, and coercing the employees in the exercise of their rights guaranteed to them in Section 7 of the Act in violation of Section 8(a)(1) of the Act by threatening not to reinstate employees because of the employees' union activities; threatening employees that they were to mind their own knitting when they returned to work because of their union activities; threatening to get rid of the Union; offering wage increases in order to induce its employees to break the strike and return to work; telling employees that, if it had to reinstate everybody in the Union, it was in no hurry to start back to negotiations; threatening to shut the door of the plant rather than continuing to deal with the union president; telling its employee that, by returning to work after engaging in the strike, she had lost her seniority status; informing employees that they would not be considered for employment until after the decertification election; removing its employees' picket signs; engaging in surveillance of its employees' union activities; threatening its employees that there would be no more collective-bargaining agreements with the Union; and telling its employees that they would have a good place to work once the Union was defeated.

(b) Refusing to reinstate its employees and discharging its employees and thereafter failing and refusing to reinstate those employees because of the employees' concerted activities or union activities.

(c) Dominating, assisting, and contributing to the support of, or interfering with, the Employee Committee, provided, however, that nothing in this Order shall require or authorize Respondent to vary or abandon any wage, hour, seniority, or other substantive benefit it has established for its employees because of the aforesaid agreement, or to prejudice the assertion by its employees

[31] As to employees Adkins, Crossland, Cook, Cross, Hayes, Holder, Jones, Prince, Peters, Woodward, and Wentzell, backpay should run from the date of their discharge, September 5, 1979. See *Abilities and Goodwill, Inc.*, 241 NLRB 27 (1979). Although employee Cathy Becquet was also discharged, her backpay should be computed from September 12, 1979, when she was first denied reinstatement pursuant to her unconditional offer to return to work.

[32] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[33] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

of any rights they derived as a result of said agreement; and further provided that nothing herein shall be construed as prohibiting its employees from forming, joining, or assisting any labor organization.

(d) Recognizing the Employee Committee, or any successor thereto, as a representative of its employees concerning wages, rates of pay, hours of employment, or any other terms and conditions of employment.

(e) Refusing to recognize or bargaining collectively with Local 259, Stove, Furnace, and Allied Appliance Workers' International Union of North America, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the unit described below:

> All production and maintenance employees, including shipping, receiving, and tool crib employees, excluding all office clerical employees, technical and professional employees, and supervisors as defined in the Act.

(f) Unilaterally, without bargaining with, Local 259, Stove, Furnace, and Allied Appliance Workers' International Union of North America, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the above-described unit, changing wages or other conditions of employment or unilaterally establish an employee committee.

(g) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed to be necessary to effectuate the policies of the Act:

(a) Offer Cathy Becquet, Dickie Adkins, Lacon Crossland, Sam Cook, Michael Cross, Robert Hayes, Michael Holder, Larry Jones, Jimmy Prince, Larry Peters, E. W. Woodward, David Wentzell, and the employees listed herein in Appendix A, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, discharging, if necessary, any replacements hired on or after August 27, 1979.

(b) Make the above-named employees whole for any loss of pay they may have suffered as a result of the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Withdraw and withhold recognition from and completely disestablish the Employee Committee or any successor thereto as a representative of its employees for the purpose of collective bargaining, including the settlement of grievances.[34]

(d) Upon request, bargain with Local 259, Stove, Furnace, and Allied Appliance Workers' International Union of North America, AFL-CIO, as the exclusive representative of all the employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Lewisburg, Tennessee, plant copies of the attached notice marked "Appendix B."[35] Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[34] *Sound Technology Research, supra.*

[35] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

Employees and their dates of unconditional offers received by Respondent

Cathy Becquet[1]	9-12-79
Alfred Jett	10-23-79
Dewey W. Rowe[2]	10-5-79 & 10-23-79
Michael W. Brewer[3]	10-17-80
Charles E. McCord	10-23-79
Ann Derryberry	10-23-79
Eddie Ward	12-05-79
Clyde Erwin	10-23-79
Sherry Willoughby	10-24-79
David Sherin	10-23-79 & 1-23-80
Chit Derryberry	10-23-79
James D. Flowers	1-10-80
Gary McClendon	11-01-79
Wesley Poteete	10-24-79
Sandra D. Luna	10-27-79
Jimmy Winchester	10-31-79
Raymond Osborne	10-31-79
Edel Sparks	1-05-80
Eugene Pullen	10-23-79
Roy Rowe	10-23-79
Paul Rowe	10-23-79
James Stewart	10-23-79
Becky Gillium	10-23-79
William F. Stewart	10-23-79
Margaret Neill	10-23-79
Karon P. Wells[4]	10-23-79
Nancy Reed	10-23-79
John Liggett	10-23-79
Stanley Galbraith	10-24-79
Marie Logue	10-24-79
Ruby Eckenroth	10-26-79
Larry S. Hopper	10-30-79

Shirley P. Metcalf	10-31-79
Nancy Diane Smith	1-10-80
Sam L. Cook, Jr.	1-10-80
Ben Porterfield	1-11-80
William F. Davis	1-11-80
Thomas R. Smith	1-11-80
Roy Garrett	1-19-80
Ronnie L. Burns	1-21-80
Wilburn Phillips	1-21-80
James Stegall	1-21-80
Chestley Derryberry	1-23-80
Mark Welch	1-23-80
William E. Taylor	1-23-80
Bill D. Spence	1-23-80
Eddie Ward	1-28-80
Frankie Moore	2-11-80
Wendell J. Rowe	2-12-80
Jackie Metcalf	2-22-80
Mark Welch	3-31-80
Denise Luker	2-12-80

[1] Although Cathy Becquet is not included on Respondent's list of employees who made unconditional offers, testimony which I have credited shows that Becquet first unconditionally offered to return to work to Respondent orally on September 12, 1979.

[2] Dewey Rowe testified that he offered to return to work about 2 weeks before the election. I have credited that testimony.

[3] Michael W. Brewer was not listed on Respondent's list of employees who have made unconditional offers. However, the evidence, which I credit, demonstrates that Brewer talked with both Plant Superintendent Atkisson and President Walker on October 17 or 18, 1979, about returning to work after he (Brewer) had received a separation slip from Respondent. I find that Brewer's inquiry on that date constitutes an unconditional offer to return to work.

[4] Karon P. Wells may be the same person that testified during the hearing herein—Karen Wells. If so, the record reflects, and I find, that Wells was terminated on October 3, 1979, pursuant to Respondent's policy (which was included in the last collective-bargaining agreement) not to employ both husband and wife. Mrs. Wells' husband, Robert L. Wells, had returned to work from the strike on September 25, and was working at the time of his wife's termination. I find that Mrs. Wells was terminated for legitimate and substantial business reasons. Therefore, if she is Karon Wells, she is not entitled to reinstatement following her October 23 offer.